

ESTTA Tracking number: **ESTTA679277**

Filing date: **06/22/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 91221895  |
| Party                  | Plaintiff<br>Edward J Yablon  |
| Correspondence Address | Edward J Yablon<br>PC-VIP inc<br>115 E 87th St21-C<br>New York, NY 10128<br>UNITED STATES<br>jeff@answerguy.com |
| Submission             | Motion for Default Judgment   |
| Filer's Name           | Edward Jeffrey Yablon   |
| Filer's e-mail         | jeff@answerguy.com  |
| Signature              | /Edward Jeffrey Yablon/   |
| Date                   | 06/22/2015  |
| Attachments            | objection to suspension of trademark proceedings on 86448439, .pdf(115809 bytes )                               |

1                   **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
2                   **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3  
4 Edward J. Yablon                   )  
  )  
5           Opposer                   ) Application Serial No. 86448439  
  )  
6           v.                            ) Mark: WORDPRESS  
  )  
7 WordPress Foundation            ) Opposition No. 91221895  
8    )  
9           Applicant                   )

10                   **COUNTER-MOTION OBJECTING TO SUSPENSION OF PROCEEDINGS AS FILED**  
11                   **UNDER ESTTA TRACKING NUMBER 679109 AND REQUEST FOR DEFAULT**  
12                   **JUDGEMENT**

13  
14                   Opposer hereby objects to and moves for rejection of Applicant's Motion to Suspend  
15 Proceeding. Applicant has failed to show just cause for such a suspension, has mis-cited both 37  
16 CFR § 2.117(a) and Section 510.02(a) of the Trademark Trial and Appeal Board Manual of  
17 Procedure, and has sought this suspension as matter of convenience to Applicant and in an  
18 attempt to mislead the Trademark Trial and Appeal Board both as to the matters under  
19 consideration in their pending lawsuit and as to its origination and provenance.  
20

21                   Opposer further moves for default judgment by way of rejection and dismissal of  
22 Trademark Application 86448439.  
23


24                   In support of this counter-motion and request for default judgment, Opposer states as  
25 follows:

- 26                   1. Neither 37 CFR § 2.117(a) nor Section 510.02(a) provide applicable grounds for  
27 suspension of this matter. As precondition for the requested suspension both  
28 citings read “Whenever it shall come to the attention of the Trademark Trial and

1 Appeal Board that a party or parties to a pending case are engaged in a civil  
2 action or another Board proceeding which may have a bearing on the case,  
3 proceedings before the Board may be suspended until termination of the civil  
4 action or the other Board proceeding.”. The matter cited as justification for  
5 suspending this proceeding, however, has no impact upon 86448439, as the merits  
6 for approval or rejection of the Trademark Application would not be impacted by  
7 the outcome of the matter cited. That matter, should it be docketed, is a matter of  
8 penalties sought against Opposer and in no way impacts the outcome of the  
9 adjudication of 84448439 on its merits regarding trademark issuance.

- 10 2. The matter cited by Applicant as grounds for suspension of this matter as stated in  
11 37 CFR 2.117(a) and Section 510.02(a) of the Trademark Trial and Appeal  
12 Board Manual of Procedure is arguably not “in progress” and was certainly not  
13 in progress at the time opposition 91221895 was filed. Post-opposition, Applicant  
14 has requested a jury trial in US District Court but that trial has not been granted  
15 and Opposer intends to seek dismissal if and when it is. The matter has not been  
16 docketed, nor has Opposer been served notice of the pending litigation.
- 17 3. Applicant's attempt to suspend this proceeding is reactive not to law nor the  
18 standards of the Trademark Trial and Appeal Board, but to its belief that it cannot  
19 adequately defend its application in the face of the Opposer's position. Applicant's  
20 request for trial in US District Court occurred 37 days after this matter was  
21 opposed and instituted specifically in an attempt to derail this matter in the hopes  
22 Opposer would withdraw. This is an example of BAD FAITH and an attempt to  
23 manipulate both the US District Court and the Trademark Trial and Appeal Board  
24 through duplicitous means.
- 25 4. Opposer hereby affirms its intent to continue Opposition in the same manner  
26 stated in 91221895 regardless of the outcome of the matter cited. By definition,  
27 therefore, if that trial were to be docketed and move forward it would have no  
28 bearing as required in 37 CFR § 2.117(a) and Section 510.02(a)

1           5. Despite claims otherwise regarding timeliness of its request to suspend this  
2           matter, Applicant has not, in fact, answered Opposition 91221895 by the  
3           mandatory deadline of June 21, 2015. Absent outstanding matters that are A)  
4           properly docketed and B) might impact this matter, Applicant's failure to respond  
5           (37 CFR § 2.120(g)(2) and Section 527.01(b) of the Trademark Trial and Appeal  
6           Board Manual of Procedure) to 91221895 by the deadline is cause for rejection of  
7           86448439. Because Applicant has failed to respond appropriately and as per  
8           schedule, Opposer requests immediate default judgment via rejection of  
9           Application Serial No. 86448439 , with prejudice.

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11  
12 By  June 22 2015  
13           Edward Jeffrey Yablon

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15  
16  
17                           CERTIFICATE OF SERVICE

18       The above-signed hereby certifies that a copy of this COUNTER-MOTION OBJECTING TO  
19       SUSPENSION OF PROCEEDINGS AS FILED UNDER ESTTA TRACKING NUMBER  
20       679109 AND REQUEST FOR SUMMARY JUDGEMENT ON APPLICATION SERIAL NO.  
21       86448439 has been served by depositing a copy of the same in the United States Mail, First Class  
22       Postage Prepaid and properly addressed to: David A.W.Wong Barnes & Thornburg LLP 11 S.  
23       Meridian St Indianapolis, IN 46204-3506 this 22nd day of June, 2015.